

U.S. Environmental Protection Agency

Hawaii Department of Agriculture

FY2011 End-of-Year Review

Pesticide Continuation Cooperative Agreements

February 2012

Executive Summary- This report covers workplan activities conducted in FY11, and is based on discussions and review of documents throughout the year and during the end of year visit. Discussions were held during the end of year visit that focused on recent changes to the pesticide program at Hawaii Department of Agriculture (HDA). Staff shortages and furlough days, as well as a long-term loss of a computer server impacted HDA's day to day operations, although HDA exceeded projected inspection numbers during FY11. Enforcement review and case development slowed during FY11 due to the diversion of staff time to respond to six major FOIA-type requests for information during the course of the year. Recommendations for improvements to inspection procedures and overall programs can be found within the body of this report. The Program Manager position was filled in FY11 by Thomas Matsuda, already located in the Pesticides Branch. This is a critical position within the Pesticide program, both as a connection between staff on each island, and as a voice for the Department on pesticide issues on a national level.

I. BACKGROUND

A. General

1. Project Period: October 1, 2010 – September 30, 2011.

2. EPA Assistance Agreement Number: #E-00915910
(Consolidated Enforcement and Programs); # E-00941910 (Certification & Training).

3. Review method: On-site

4. Review participants:

EPA: Mary Grisier, Hawaii Pesticide Project Officer

Grantee: Thomas Matsuda, Pesticide Program Manager, Avis Onaga, Case Preparation Officer, and Dean Yoshizu, Compliance Officer

5. Review date(s) and location: November 8-10, 2011 at the Hawaii Department of Agriculture offices in Honolulu.

B. Scope of Review

The Hawaii Department of Agriculture (HDA) has partial primary enforcement responsibility over pesticide use activities in the State of Hawaii and is the lead state agency for the enforcement of the Hawaii Pesticides Law (Chapter 149A, Hawaii Revised Statutes) and the Hawaii Administrative Rules (Chapter 66, Title 4). There are approximately 1,120,000 acres in farmland, 7,500 farms, 7,300 agricultural workers, 3,090 Agricultural Operators, 1,180 certified applicators, 21 licensed Restricted Use Pesticide (RUP) dealers, 20 pesticide producing establishments, and four licensed aerial

applicators in the state of Hawaii. Major crops in Hawaii include seed corn, coffee, papaya, bananas and nursery plants. Average farm size in Hawaii averages 150 acres. HDA maintains a database of all pesticides licensed in Hawaii. The HDA Pesticide program consists of approximately 14 individuals over 4 islands performing inspection, education, registration, administrative, and various pesticide program activity functions.

The Hawaii Pesticide program is supported by both State (general and revolving) and federal (USDA and USEPA) funds. HDA and USEPA Region 9 had two active continuation cooperative agreements with pesticide related activities to be carried out in Federal Fiscal Year 2011. 1) The Pesticide Consolidated Enforcement agreement, and 2) the Certification & Training continuation agreement. Beginning in FY12, HDA and EPA have entered into a Performance Partnership Agreement, which will replace both continuation agreements and is designed to reduce paperwork and provide administrative relief to HDA.

The FY11 end-of-year evaluation was primarily accomplished by reviewing quarterly reports, correspondence received from HDA throughout the year, and the on-site visit by Mary Grisier, project officer for HDA. Information gathered was compared to the outputs and standards in the cooperative agreements to determine if HDA had met its commitments.

II. FINANCIAL

A. Budget Analysis

The following table summarizes funding and expenditures for the FY11 cooperative agreement. HDA maintained a separate agreement for Certification and Training due to the difference in match. In FY11, approximately three FTE were supported by the EPA funding (Inspector, Pesticide Specialist, and Chemist).

At the time of this writing, Financial Status Reports (FSRs) for FY11 were not due and had not been received.

Work Plan Component	EPA Funding	Grantee Funding*	Total Funding
Enforcement	\$250,000	\$45,278	\$295,278
Programs	\$ 81,125	\$15,144	\$ 96,269
C&T	\$ 30,000	\$30,651	\$ 60,651
TOTAL	\$361,125	\$91,073	\$452,198

* State is required to provide 50% match in C&T, 15% (by policy) for other programs.

B. Re-budgeting –There was no rebudgeting in FY11.

III.GENERAL GRANT ADMINISTRATION

A. Recommended Actions for Grants Office - None

IV. COMPLIANCE AND ENFORCEMENT

A. Grantee Reports

1. Pesticide Enforcement Outcome Measures

HDA reported on the three Office of Enforcement and Compliance Assurance (OECA) measures for pesticide enforcement (Appendix 1). Values reported were:

- a. Repeat violator: 6 % of actionable inspections included entities receiving an action in the past three years
- b. Verified compliance: 11% of actionable inspections resulted in verified compliance
- c. Cost per actionable inspection: \$19,357 is the cost per actionable inspection.

Compared to FY10, there were fewer repeat violators, and there was an increase in the percentage of inspections that resulted in verifiable compliance. The cost per actionable inspection, however, increased from \$5,728 to \$19,357. This is partially a result of a backlog of files that developed, as many inspection files from FY11 were not actually reviewed in time to be counted in this measure.

2. Summary of 5700-33H reports – attached as Appendix 2.

3. Annual Summary of Inspections and Enforcement Actions

HDA exceeded the number of projected inspections (361 projected, 383 completed). The percentage of all reported inspections (383) that resulted in any enforcement action was 9%, down considerably from 28% in FY10, with marketplace inspections resulting in the highest percentage of actions of any inspection category (38%) followed by ag follow-up inspections (20%). There are several reasons for this low percentage of actionable inspections. First, at the time of the review, many of the 383 inspections conducted had not yet been reviewed by the case review officer. Six Uniform Information Practices Act Requests had been received by the Department during FY11, shifting the focus of the case preparation officer from inspection file review to responding to these requests, which are similar to the federal Freedom of Information Act Requests. In addition, HDA employees were required to take two furlough days per month during FY11, further reducing the time available for file review. Four cases were assessed fines in FY11, versus three in FY10. Twenty nine inspection files were referred to EPA for

enforcement review and possible development in FY11. EPA referred three of those files to other Regions.

B. Case File and Enforcement Action Evaluation

1. Significant Cases (FIFRA Section 27)

There were no high level episodes reported in FY11. Each island maintains a separate list of all episodes and complaints received. These are recorded and reported to EPA.

2. Routine Inspections – other than Worker Protection

Forty case files were reviewed. Inspection files were randomly selected from actionable and non-actionable inspections. Inspections selected represented the work of five different inspectors. Inspections continue to document compliance/non compliance with pesticide laws, and for the most part include necessary evidence such as photographs, labels and invoices. HDA forwards any inspections conducted with a federal credential, or that reveal a federal violation, to EPA. There were no Special Requests issued to HDA during FY11. HDA did not complete any container/containerment inspections, as there are no facilities currently identified in Hawaii that meet the necessary criteria.

HDA experienced a failure in their internal file server in September, 2010, and a new server could not be installed until June 2011. Inspections had to be tracked manually during that time, and information had to be reconstructed for internal statistical purposes. The failure also affected HDA's ability to track RUP sales during that time, and also slowed HDA's ability to respond quickly to information requests. HDA plans to address their overall inspection file backlog in FY 12 by increasing the staff time devoted to case review and enforcement.

1. Oversight inspections (non-WPS) - none

C. Compliance Priority – Worker Protection Standard (WPS)

1. Reports

- a) The Pesticide Worker Protection Standard Inspection and Enforcement Accomplishment Report (WPS Form 5700-33H) is included as Appendix 3.

2. Significant WPS Cases (FIFRA Section 27) - none

3. WPS oversight inspections – none

4. WPS case file evaluation

HDA conducted nineteen WPS Tier 1 inspections at establishments throughout Hawaii. At the time of the review, some of the Tier 1 inspection reports had not yet been reviewed by the case developer, but for the most part, establishments were found to be in compliance with the WPS. Inspection files were complete and contained required information. One Tier 2 inspection was also conducted. Inspections were of high quality and included appropriate documentation.

5. Worker Protection Risk-Based Targeting Strategy

a) Implementation of Risk-Based Targeting Strategy

A WPS targeting strategy was developed in 1994. Targeting was based partly on how many restricted-use pesticides were purchased by growers. Since that time, agriculture has changed dramatically in Hawaii. The number of large farms with many workers has greatly decreased. Farms are smaller (average farm size is 150 acres) and growers buy smaller quantities of pesticides. Inspectors have found that they can identify establishments that fall under the WPS by conducting typical agricultural use inspections and asking questions related to worker activity during the inspection. They will then return at a later date to conduct a WPS inspection. The larger, existing establishments are inspected approximately every two years.

D. Inspection and Enforcement Support

1. Training

At the time of the EPA visit in November, 2011, HDA conducted an annual pesticide training workshop for all HDA Pesticide Program staff (inspectors, education, and registration staff) and outer Pacific Island pesticide programs. The workshop reflected on the previous year accomplishments and established priorities and goals for the coming year. Special focus was directed at reviewing the workplan commitments agreed upon between HDA and EPA. The Program Manager stressed the need for staff to focus on repeat violators, making sure that monthly checks are done to identify those locations that require a follow-up visit to ensure compliance. Medical monitoring and respirator fit-testing were provided to inspectors.

At the time of the review, HI Dept. of Agriculture had seven federally-credentialed inspectors. Training records were properly maintained at the Honolulu office, and inspectors had met the commitments outlined in the FIFRA inspector credential authorization agreement.

TRAINING	DATE
Inspector Workshop – Honolulu	11/10
EPA Inspector Workshop, SF, CA	3/11
WRPM –Sacramento, CA	5/11

Nat'l C&T Workshop – Portland, OR	8/11
Sr. Executive PREP, Atlanta	8/11
Public Perception PREP, Davis	9/11
EPA Structural PIRT, Davis	9/11

2. Enforcement Response Policy

The Hawaii Department of Agriculture revised and adopted its Pesticide Enforcement Action and Penalty Assessment Schedule on October 24th, 2006. Review of case files indicates that for the most part, HDA follows its enforcement response policy. There are a number of areas where the policy is in need of updating; it is not likely that this will occur in the near future, however, as it will require regulation changes.

3. Neutral Inspection Scheme

In September, 2007, HDA issued a revised Standard Operating Procedure (SOP) for developing neutral inspection schemes on each island. Applicators that are likely to use more RUPs are inspected more frequently. This is based on amounts of RUPs purchased divided by the number of applicators employed by a business. With regard to marketplace inspections, HDA does not make use of a neutral inspection scheme; inspections are conducted primarily based on complaints.

4. Inspection and Enforcement Procedures

Discussions were held throughout the year between HI inspection staff and EPA as procedural issues arose. While EPA realizes that revisions to HDA's enforcement response policy are not likely to occur in the short term, HDA is encouraged to continue to identify those areas that are lacking in the ERP, so that at a future date, changes can be made. HDA is in the process of revising the Branch Standard Operating Procedures, which includes neutral inspection procedures.

5. Quality Assurance

HDA submitted a Quality Management Plan (QMP) to EPA on September 27, 2000. EPA provided formal comments to HDA in late FY07. Hawaii's submission includes elements of both a QMP and a Quality Assurance Program Plan (QAPP). In FY10, HDA was not able to devote time to revising this document. In FY09, EPA included the following recommendation in the end of year report:

Recommendation 09-02: HDA should revise and update quality assurance documents in FY10. EPA is available to assist with any questions that HDA or the Chemical Analysis Laboratory may have in these revisions.

Status: This recommendation is still in effect; no work on the QAPP was completed in FY11. A new template developed by EPA Region 9 has been provided to HDA in FY11, and should be used to update Hawaii's QAPP. HDA should report on progress made to the QAPP in quarterly reports.

6. Special activities requested by Region

In cooperation with EPA, HDA is providing ongoing support to outer Pacific island pesticide program staff on import, inspection, enforcement, and certification issues. As in previous years, HDA extended an invitation to outer island inspectors to attend the Inspector Workshop. Attendance at the workshop provides an opportunity for the inspectors to receive medical monitoring exams and respirator fit tests, as well as to participate in discussions with fellow inspectors. Inspectors from the outer islands were also able to observe Vikane inspections, and were provided training on ag and non-ag use inspections at locations such as banana farms, hotels and a golf course.

E. New Legislation and Regulations

There was no new pesticide-related legislation proposed or passed in FY11.

F. Action Items from Previous Reviews

Recommendation 09-02: HDA should revise and update quality assurance documents in FY10. EPA is available to assist with any questions that HDA or the Chemical Analysis Laboratory may have in these revisions.

Status: HDA is committed to working on the revised QAPP during FY12.

Recommendation 10-01: A narrative end of year report, covering all program areas and due 40 days after the end of the fiscal year should be prepared and forwarded to the Regional Office as soon as possible.

Status: A narrative end of year report was submitted by HDA in November for FY11 activities. Timely reporting is appreciated.

Recommendation 10-02: HDA should review their enforcement penalty policy and identify areas that need revision or update.

Status: This was discussed during the end of year review, but it is unlikely that this will happen in the near future, since it will require a regulation change to make any revisions to the policy. HDA understands where the penalty policy has weaknesses and/or is problematic, and will be ready to make those changes, should the possibility arise.

Recommendation 10-03: HDA should develop a neutral scheme for conducting marketplace inspections. One approach would be to select an EPA priority area (such as products that make public health claims) to create a neutral inspection scheme.

Status: This recommendation remains in effect; HDA has not been able to put staff time into this activity as of yet.

G. Conclusions and Recommendations for Compliance/Enforcement

HDA continues to maintain a quality enforcement program. HDA continued to re-inspect numerous establishments to assess compliance with the WPS in FY11. HDA is encouraged to revisit and revise its enforcement response policy, and maintain its focus on WPS enforcement. Policies and documents in need of revision and update should be

identified and a plan put in place to make the necessary changes. Measures to reduce the backlog of inspection files awaiting review are currently being put in place.

V. PROGRAMS

A. Worker Safety – C&T

1. Previous Recommendations - none

2. Accomplishments

a) Work-Plan Commitments & National Program Priorities

HDA had 1695 certified commercial and private applicators at the end of FY11, up from 1617 at the end of FY10. HDA updated the State Certification & Training plan, administered exams, and reviewed 210 courses for continuing education units, compared to 118 the previous year. HDA also provided twenty-nine presentations to certified applicators during the course of the year, up from two the year before. Five courses were monitored by HDA. Numbers of presentations were up from FY10 as expected, as new staff came up to speed.

HDA worked closely with the Cooperative Extension Service (CES), meeting 3-4 times per year with representatives from CES Pesticide Applicator Training Program, at the University of Hawaii. HDA also meets with the Hawaii Pest Control Board, which reviews and approves applications for new pest control businesses in the state. University personnel travel to each of the neighbor islands to prepare applicators for the certification exam on a yearly basis.

Certification cards issued in Hawaii currently have a photo ID and bar code. Annual C&T Plan Reports for Hawaii and other states are available at: <http://cpard.wsu.edu/>

3. PART Review Measures - none

4. State/Tribe Feedback - none

5. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY11.

B. Worker Safety - WPS

1. Previous Recommendations - none

2. Accomplishments

a) Work-Plan Commitments & National Program Priorities

HDA conducted 67 consultative visits, including 18 WPS-related visits that reached 144 people. Consultative visits are scheduled when a new applicator becomes certified, or, if

an applicator has received a notice of warning, a visit may be made to ensure that the applicator has subsequently come into compliance. Problems identified during these visits are often incorporated into certification training and examinations. HDA also provided outreach using the updated How to Comply Manual to agricultural establishments. No pesticide-related occupational incidents were reported by the Department of Health. HDA meets several times per year with the University of Hawaii Cooperative Extension and the Pest Control Board of the Department of Commerce and Consumer Affairs to discuss training and WPS issues.

3. PART Review Measures - none

4. State/Tribe Feedback - none

5. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY11.

C. Water Quality

1. Previous Recommendations - none

2. Accomplishments

a) Work-Plan Commitments & National Program Priorities:

HDA continues to update the Pesticides of Interest Tracking System (POINTS) database and to review new pesticide products for groundwater and surface water concerns. Specifically, HDA has evaluated 47 of 71 Pesticides of Interest (66%), is actively managing 15 of 16 Pesticides of Concern (POC; 94%) and is demonstrating progress for 9 of 15 actively managed POCs (60%). Hawaii continues to use modeling to determine whether new chemicals may have the potential to leach into groundwater. HDA continually reviews pesticide labels to ensure that they include necessary language for protection of ground and surface water. HDA has identified several labels, including rodenticides and termiticides that do not have appropriate water quality protection language. Restricted use pesticide sales records are monitored to identify products that may affect water quality. HDA continues to have discussions with HI Department of Health (DOH) as well as registrants to discuss pesticides of concern for surface and ground water. HDA participated in discussions with DOH on upcoming NPDES activities.

3. PART Review Measures - none

4. State/Tribal Concerns - none

5. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY11.

D. Endangered Species

1. Previous Recommendations - none

2. Accomplishments

a) Work-Plan Commitments & National Program Priorities

HDA continues to consult and coordinate with other State agencies on Section 18 emergency exemption requests and special local needs registration applications. HDA plans to assign a staff person to endangered species activities during FY12.

3. PART Review Measures - none

4. State/Tribe Feedback – none

5. Conclusions and Recommendations

All negotiated outputs have been satisfactorily met for FY11.